

THE AMERICAN FLAG DESERVES LEGAL PROTECTION REGARDLESS OF THE NUMBER OF FLAG DESECRATIONS IN RECENT YEARS

The Clinton administration testified that, in light of what it refers to as " \* \* \* only a few isolated instances [of flag burning], the flag is amply protected by its unique stature as an embodiment of national unity and ideals." [Testimony of Mr. Dellinger, June 6, 1995 at p. 1] I find that comment simply wrong.

First, aside from the number of flag desecrations, our very refusal to take action to protect the American flag clearly devalues it. Our acquiescence in the Supreme Court's decisions reduces its symbolic value. As a practical matter, the effect, however unintended, of our acquiescence equates the flag with a rag, at least as a matter of law, no matter what we feel in our hearts. Anyone in this country can buy a rag and the American flag and burn them both to dramatize a viewpoint. The law currently treats the two acts as the same. How one can say that this legal state of affairs does not devalue the flag is beyond me.

This concern is shared by others. Justice John Paul Stevens said in his Johnson dissent:

... in my considered judgment, sanctioning the public desecration of the flag will tarnish its value. That tarnish is not justified by the trivial burden on free expression occasioned by requiring that an available alternative mode of expression—including uttering words critical of the flag—be employed. [491 U.S. at 437].

Prof. Richard Parker of Harvard Law School testified after Mr. Dellinger, and in my view, effectively rebutted his argument.

If it is permissible not just to heap verbal contempt on the flag, but to burn it, rip it and smear it with excrement—if such behavior is not only permitted in practice, but protected in law by the Supreme Court—then the flag is already decaying as the symbol of our aspiration to the unity underlying our freedom. The flag we fly in response is no longer the same thing. We are told . . . that someone can desecrate "a" flag but not "the" flag. To that, I simply say: Untrue. This is precisely the way that general symbols like general values are trashed, particular step by particular step. This is the way, imperceptibly, that commitments and ideals are lost.

Second, as a simple matter of law and reality, the flag is not protected from those who would burn, deface, trample, defile, or otherwise physically desecrate it.

Third, whether the 45-plus flags whose publicly reported desecrations between 1990 and 1994 of which we are currently aware, and the ones which were desecrated so far this year, represent too small a problem does not turn on the sheer number of these desecrations alone. When a flag desecration is reported in local print, radio, and television media, potentially millions, and if reported in the national media, tens upon tens of millions of people, see or read or learn of them. How do my colleagues think, Rose Lee, for example, feels when she sees a flag dese-

cration in California reported in the media? The impact is far greater than the number of flag desecrations.

Physical desecration of the American flag has occurred every year since the Johnson decision. I do not believe there is some threshold of flag desecrations during a specified time period necessary before triggering Congressional action. Certainly, critics of the amendment cite no such threshold. If it is right to empower the American people to protect the American flag, it is right regardless of the number of such desecrations in any 1 year. And no one can predict the number of such desecrations which may be attempted or performed in the future.

If murder rarely occurred, would there not be a need for statutes punishing it? Espionage prosecutions are not everyday occurrences. Treason prosecutions are even more infrequent, but treason is defined in the Constitution itself and no one suggests we repeal that provision or treason statutes.

Our distinguished colleague from Alabama, Senator HEFLIN, also responds to the criticism that there are too few flag desecrations to justify an amendment by noting: "in my judgment, this is the time, in a cool, deliberate, calm manner, and in an atmosphere that is not emotionally charged to evaluate values. I think that is something that makes it appropriate to do it now. I [believe] that there have to be in this Nation some things that are sacred." I think my friend from Alabama is absolutely right.

Mr. President, I believe our time is about all up, and I would be happy to yield it back unless somebody wants to speak.

The PRESIDING OFFICER. I might inform the Senator he has 2 minutes and 30 seconds remaining.

Mr. HATCH. I will be happy to yield it back. I understand the other side's time is consumed.

## RECESS

The PRESIDING OFFICER. If there is no objection, the Senate will stand in recess until the hour of 2:15 this afternoon.

There being no objection, the Senate, at 10:37 a.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. COATS].

## FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution.

### AMENDMENT NO. 3093

The PRESIDING OFFICER. Under the previous order, the question is on amendment No. 3093 offered by the Senator from Delaware. Under the previous order, there are 2 minutes of remaining debate time equally divided.

The Senator from Utah.

Mr. HATCH. Mr. President, I normally would want the distinguished

Senator from Delaware to go first, but let me say this. This amendment is doubly flawed. First, it does not offer proper protection to the flag. A veteran writing the name of his or her unit on a flag is a criminal if we pass the statute authorized by this amendment.

Second, we have never in 206 years written a statute into the Constitution. This amendment is a textbook example of blurring the distinction between our fundamental charter, our Constitution, and a statutory code. We cannot do this to our Constitution.

The same amendment was rejected 93 to 7 in 1990. And it has not improved with age. There is a better way to protect the flag: vote down the Biden amendment, and then vote for the Hatch-Hefflin-Feinstein amendment.

Mr. President, I suggest the absence of a quorum.

Mr. BIDEN. I ask that you withhold that request.

Mr. HATCH. I withhold.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. I understand we have 1 minute.

Mr. President, I believe that the amendment of my friend from Utah is fatally flawed. For the first time ever, it puts the Federal Government in the position of the State governments of choosing what types of speech they think are appropriate. My amendment protects the flag, plain and simple. It is straightforward. It does not allow the Government to choose. It defines it. It says the flag cannot be burned, trampled upon. It is very specific.

I ask that my colleagues look at it closely and, hopefully, support it. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3093 offered by the Senator from Delaware. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mrs. HUTCHISON] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 5, nays 93, as follows:

[Rollcall Vote No. 597 Leg.]

### YEAS—5

Biden	Levin	Pell
Hollings	Nunn	

### NAYS—93

Abraham	Bradley	Chafee
Akaka	Breaux	Coats
Ashcroft	Brown	Cochran
Baucus	Bryan	Cohen
Bennett	Bumpers	Conrad
Bingaman	Burns	Coverdell
Bond	Byrd	Craig
Boxer	Campbell	D'Amato